

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No.

WILBUR L. DUNCAN,

and

GENEVA DUNCAN,

and

DUSTIN DUNCAN

Defendants.

COMPLAINT

Upon information and belief, the United States of America, Plaintiff, by and through undersigned counsel, alleges as follows:

PARTIES

1. Plaintiff is the United States of America proceeding in its sovereign capacity under 28 U.S.C. § 1345 and 18 U.S.C. § 3664(m)(1)(A)(ii).
2. Defendant WILBUR L. DUNCAN (Wilbur Duncan) is a resident of the state of Missouri.
3. Defendant GENEVA DUNCAN (Geneva Duncan) is a resident of the state of Missouri.
4. Defendant DUSTIN DUNCAN (Dustin Duncan) is a resident of the state of

Missouri.

JURISDICTION AND VENUE

5. This is a civil action initiated by the United States of America pursuant to the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. § 3001, et seq., and the Missouri Uniform Fraudulent Transfer Act (UFTA), Mo. Rev. Stat. § 428.024, and involving fraudulent transfers as to a debt owed to the United States.

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because the property at issue is in the Western District of Missouri and the events giving rise to this claim occurred in the Western District of Missouri.

FACTS

8. In January 2009, Defendants Wilbur Duncan, Geneva Duncan, and Dustin Duncan acquired real property in Andrew County, Missouri, consisting of six lots in two tracts, from John C. Long.

9. On January 6, 2009, Defendants Wilbur Duncan, Geneva Duncan, and Dustin Duncan executed a Trustee's Deed by which they acquired Tract B, consisting of four lots.

10. On January 16, 2009, Defendants Wilbur Duncan, Geneva Duncan, and Dustin Duncan executed a Warranty Deed by which they acquired Tract A, consisting of two lots.

11. The Defendants owned the six lots as joint tenants with the right of survivorship.

12. Deeds reflecting the transfers of real property were filed with the Andrew County, Missouri Recorder of Deeds on January 12, 2009.

13. On May 21, 2014, Defendant Wilbur Duncan met with an agent from the Federal

Bureau of Investigation (FBI) regarding allegations that Wilbur Duncan committed bank fraud.

14. After Defendant Wilbur Duncan's meeting with the FBI, on August 1, 2014, Defendants Wilbur Duncan, Geneva Duncan, and Dustin Duncan executed a General Warranty Deed that transferred Wilbur Duncan's and Geneva Duncan's interests in two of the six lots to Dustin Duncan for ten dollars (\$10.00) in consideration.

15. The General Warranty Deed was recorded in the office of the Recorder of Deeds for Andrew County, Missouri on September 11, 2014 and described the deeded property as: "All of Lots Two (2) and Three (3) in Block Sixteen (16) Hudgens And Carpenter's subdivision of land lying North of and adjoining Hudgens and Carpenter's Addition to the City of Savannah, Andrew County, Missouri" (the Property).

16. On February 18, 2015, Defendant Wilbur L. Duncan pleaded guilty to loan application fraud in a four-count Information filed in the Western District of Missouri, *United States of America v. Wilbur L. Duncan*, Case Number 15-00063-01-CR-W-BCW.

17. On January 28, 2016, Defendant Wilbur Duncan was sentenced to 5 years of probation and ordered to pay restitution in the amount of \$1,440,951.39 and a special assessment of \$400.00.

18. In connection with its judgment, the United States filed a Notice of Lien in Andrew County on February 16, 2016 (the "Lien"). The Lien states:

NOTICE is hereby given of a lien against the property of the defendant named below. Pursuant to Title 18, United States Code, Section 3613(c), a fine or an order of restitution imposed pursuant to the provisions of subchapter C of chapter

227 is a lien in favor of the United States upon all property
belonging to the person fined or ordered to pay restitution.

19. On or about October 10, 2017, counsel for the United States learned from counsel for Defendant Wilbur Duncan that the Property, which would have been subject to the Lien had it not been transferred prior to judgment, was transferred when Defendant Wilbur Duncan was aware that he faced potential criminal charges.

20. As of April 4, 2019, Defendant Wilbur Duncan had a restitution balance of \$1,429,701.61.

21. Upon information and belief, there is equity in the Property that is rightfully subject to the United States' Lien to satisfy the restitution judgment.

FIRST CLAIM FOR RELIEF
28 U.S.C. §§ 3304(b)(1)(A) and 3306(a)(1)
(Avoidance of Fraudulent Conveyances)

22. The allegations of paragraphs one through 21 are incorporated herein.

23. Defendant Wilbur Duncan owes a debt to the United States as the FDCPA defines such term.

24. The transfer of the Property was made with the actual intent to hinder, delay, or defraud the United States.

25. Based on the foregoing, the transfer of the Property was fraudulent as to a debt of the United States.

SECOND CLAIM FOR RELIEF
28 U.S.C. §§ 3304(b)(1)(B) and 3306(a)(1)
(Avoidance of Fraudulent Conveyances)

26. The allegations of paragraphs one through 21 are incorporated herein.

27. The transfer of the Property was made without receiving of reasonably equivalent value in exchange for the transfer, and Defendant Wilbur Duncan believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due.

28. Based on the foregoing, the transfer of the Property was fraudulent as to a debt of the United States.

THIRD CLAIM FOR RELIEF
Mo. Rev. Stat. § 428.024
(Avoidance of Fraudulent Conveyances)

29. The allegations of paragraphs one through 21 are incorporated herein.

30. The transfer of the Property was made with the actual intent to hinder, delay, or defraud the United States.

31. Based on the foregoing, the transfer of the Property deed was fraudulent as to a debt of the United States.

FOURTH CLAIM FOR RELIEF
Mo. Rev. Stat. § 428.024
(Avoidance of Fraudulent Conveyances)

32. The allegations of paragraphs one through 21 are incorporated herein.

33. The transfer of the Property was made without receiving of reasonably equivalent value in exchange for the transfer, and Defendant Wilbur Duncan believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due.

34. Based on the foregoing, the transfer of the Property was fraudulent as to a debt of

the United States.

FIFTH CLAIM FOR RELIEF

28 U.S.C. § 3306(a)(3)

(Money Judgment)

35. The allegations of paragraphs one through 21 are incorporated herein.

36. The United States is entitled under the FDCPA to a money judgment against Defendant Wilbur Duncan in an amount that reflects Defendant Wilbur Duncan's equity interest in the Property but not to exceed the amount that Defendant Wilbur Duncan owes on his restitution judgment.

PRAYER FOR RELIEF

WHEREFORE, the UNITED STATES requests relief as follows:

1. A declaration of nullity and voidance of Defendants Wilbur Duncan's and Geneva Duncan's transfer of the Property to Defendant Dustin Duncan;
2. A declaration that the United States' Lien applies to the Property;
3. A money judgment against Defendants in an amount that reflects Defendant Wilbur Duncan's actual equity interest in the Property but not to exceed the amount that Defendant Wilbur Duncan owes on his restitution judgment;
4. An award of costs of these proceedings; and
5. Any other relief as the Court deems just and reasonable, and as the circumstances may require.

Respectfully submitted,

Timothy A. Garrison
United States Attorney

By

/s/ **Leigh Farmakidis**

Missouri Bar No. 70771

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JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

United States of America ;

County of Residence: Outside This District**Defendant(s):****First Listed Defendant:**

Wilbur Duncan ;

County of Residence: Outside This District**Additional Defendants(s):**

Geneva Duncan ;

Dustin Duncan ;

County Where Claim For Relief Arose: Andrew County**Plaintiff's Attorney(s):**

AUSA Leigh Farmakidis (United States of America)

United States Attorney's Office

400 E. 9th St.

Kansas City, Missouri 64106

Phone: 816-426-7166**Fax:****Email:** leigh.wasserstrom@usdoj.gov**Defendant's Attorney(s):****Basis of Jurisdiction:** 1. U.S. Government Plaintiff**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 150 Other Recovery Actions/Enforcement of Judgements

Cause of Action: Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. § 3001, et seq., and the Missouri Uniform Fraudulent Transfer Act (UFTA), Mo. Rev. Stat. § 428.024, and involving fraudulent transfers as to a debt owed to the United States.

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands): 1,429,701.61

Jury Demand: No

Related Cases: RELATED to case number 15-63-01-CR-W-BCW, assigned to Judge Wimes

Signature: Leigh Farmakidis

Date: 4/22/2019

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.